

Remarks

This amendment responds to the official action mailed October 7, 2008, wherein an objection was made as to the sufficiency of disclosure of the pivot axes being "at a fixed spacing;" a number of claims were rejected as anticipated by US 5,855,348 – Fornara; and objection was made to claims 8, 9, 22-24, 29 and 31 as depending from a rejected claim, but these claims would be allowable if rewritten to include the limitations of the base and intervening claims.

Applicant has amended claim 1 to remove the phrase to which objection was made, namely the phrase stating that the two pivot axes (at the wall mounting and at the showerhead holder, respectively) are at fixed spacing. In the last response, applicant pointed out that the pivot arm as disclosed comprises a length of stock and the pivot axes are in the vicinity of ends of the length of stock, referring to the paragraphs at page 7, line 15 and page 8, line 13. (The response erroneously mentioned paragraphs [0023 and [0024], and should have referred to paragraphs [0045 and [0046]). Also, the specification provides that the pivot axes are parallel to one another, which enables the direction of spraying to be maintained when adjusting the pivot arm (paragraph [0011]). However applicant agrees that the specification does not state that the spacing of the pivot axes is fixed. Therefore, the objection has been overcome by removing that phrase.

The indication of allowable subject matter encompasses claims 8, 9, 22-24, 29 and 31, which are claims 8 and 22 and the claims that depend from them. Applicant has placed claims 8 and 22 into independent form by incorporating the base and intervening claims. Applicant has also placed claim 18 in independent form by combining the substance of claims 1 and 18 and further defining the aspect that the holder that is pivoted on the wall mounting arm engages across the housing of the showerhead (as opposed to defining a receptacle for receiving the handgrip).

More specifically, claim 8 has been placed in independent form by copying its text into claim 1. Claim 8 is canceled and claim 9 is amended to depend from claim 1.

Claim 22 has been placed in independent form to include the subject matter of claims 1, 18, 21, 22. These claims are allowable in accordance with the official action.

Claim 18 is allowable as now presented. Claim 18 has been amended to incorporate the substance of claims 1 and 18 and recites that the shower head has a handgrip and a housing, and the holder for the shower head has at least two opposed jaws configured to engage across the housing of the shower head. Aspects of the housing and its engagement by the holder previously appeared in claims 20, 23, 24, 26, etc., and are not new issues requiring substantial consideration or search.

The cited reference to Fornara (US 5,855,348) does not anticipate the subject matter of claim 18. In Fornara, there is no structure that establishes a parallel orientation of pivot axes for the mounting arm and the holder. However, in Figs. 1 and 2 of Fornara, the device is shown with its freely movable parts incidentally placed in that relative orientation. Even assuming that parallel pivot axes are disclosed by such incidental placement, Fornara lacks opposed jaws configured to engage across the housing of the shower head. Instead, Fornara has a seat 50 into which the handgrip part of the shower head 52 is telescopically received. See Figs. 1 and 2. Therefore, Fornara does not meet all the aspects defined by applicant's claim 18.

To anticipate a claim under 35 U.S.C. §102, a single prior art reference must expressly or inherently disclose each claim limitation. But disclosure of each *element* is not enough to maintain a rejection for lack of novelty. Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention, and those elements must be arranged as stated in the claim. See Net MoneyIn, Inc. v. Verisign, Inc. et al., No. 2007-1565 (Fed. Cir. 10/20/2008); See also In re Arkley, 455 F.2d 586, 587 (CCPA 1972) (“[T]he [prior art] reference must clearly and unequivocally disclose the claimed [invention] or direct those skilled in the art to the [invention] without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.”).

It is not possible to construe claim 18 so broadly, or to interpret Fornara so expansively, as to find a disclosure of the same inventive concept of a pivoting arm arranged as claimed, wherein grasping the holder or the shower head and pivoting the

arm up or down maintains the spray direction of the removable hand-shower head, while adjusting the height of the source of the spray (namely the jets emitted from the shower head housing) within the constraints of the parallel pivot axes. Fornara lacks a disclosure of all the elements claimed, arranged so as to provide this inventive result. Fornara does not anticipate or render obvious the subject matter of claim 18 as a whole.

Applicant is pleased to note the indication of allowable subject matter for claims 8, 9, 22-24, 29 and 31, according to which pending claims 1, 3, 5, 7, 9, 11-14, 16, 17, 19, 20 and 22-32 are allowable as now presented. Applicant requests reconsideration of the rejection of claim 18, and claim 21, which depends from claim 18, which are properly allowable as well.

The number of claims remains within the number permitted under the basic filing fee. No new matter is presented. The differences between the invention and the prior art are such that the subject matter claimed as a whole is neither shown to have been known or obvious. Applicant requests allowance of all pending claims 1, 3, 5, 7, 9, 11-14 and 16-32.

Respectfully submitted,

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